



STATE OF NEW JERSEY

In the Matter of Carol Fox
Borough of Keyport, Police
Department

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC DKT. NO. 2018-1033
OAL DKT. NO. CSV 15787-17

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ISSUED: APRIL 6, 2018 BW

The appeal of Carol Fox, Public Safety Telecommunicator, Borough of Keyport, Police Department, removal effective September 20, 2017, on charges, was heard by Administrative Law Judge Sarah G. Crowley, who rendered her initial decision on February 27, 2018. No exceptions were filed.

Having considered the record and the Administrative Law Judge's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting of April 4, 2018, accepted and adopted the Findings of Fact and Conclusion as contained in the attached Administrative Law Judge's initial decision.

ORDER

The Civil Service Commission finds that the action of the appointing authority in removing the appellant was justified. The Commission therefore affirms that action and dismisses the appeal of Carol Fox.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 4TH DAY OF APRIL, 2018



Deirdre L. Webster Cobb
Acting Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
P. O. Box 312
Trenton, New Jersey 08625-0312

Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 15787-17

AGENCY DKT. NO. 2018-1033

**IN THE MATTER OF CAROL FOX,
BOROUGH OF KEYPORT, POLICE
DEPARTMENT.**

Lesley Sotolongo, Esq., for appellant (DeCotis, Fitzpatrick, Coles, and Giblin, LLP, attorneys)

Leslie G. London, Esq., for respondent (McManimon, Scotland and Baumann, LLC, attorneys)

Record Closed: February 5, 2018

Decided: February 27, 2018

BEFORE SARAH G. CROWLEY, ALJ:

STATEMENT OF THE CASE

Appellant, Carol Fox is a Communications Officer / Dispatcher (Dispatcher) for the Borough of Keyport, Police Department (Keyport). She had been employed there for thirteen years, prior to her removal. A Preliminary Notice of Discipline was served after an incident which occurred on July 26, 2017. After a full hearing before town council, a Final Notice of Disciplinary Action was issued on September 20, 2017. The appellant filed

a notice of appeal which was transmitted the Office of Administrative Law (OAL) as a contested case on October 24, 2017. N.J.S.A. 52:14B-1 to -15 and 14F-1 to -13. The matter was heard on February 5, 2018, and the record closed at that time.

SUMMARY

Appellant has been charged with incompetency, inefficiency or failure to perform duties; as well as neglect of duties and other sufficient cause. Appellant was employed as a dispatcher for Keyport for thirteen years. On July 26, 2016, she left her dispatcher post at Keyport prior to her relief arriving, in violation of specific rules and department policies and practices. The appellant was working the 7:00 p.m. to 7:00 a.m. shift. The rules require the dispatcher to wait for their relief and to update them on any developments during their twelve hours shift prior to leaving. The appellant does not dispute that she left her post and that there was a prisoner in the cell.

TESTIMONY

For respondent:

Chief Mark Hafner, has been with the Keyport Police Department for thirty years. He was promoted to Captain last year. There are twenty employees in the police department at Keyport. They have two full-time dispatchers and several part-time dispatchers. A junior officer will be assigned to the dispatch desk if one of the dispatchers is not available. The duties of the dispatcher are to answer the telephone and dispatch police and fire departments to emergencies. They are to log every fifteen minutes what a prisoner is doing if there is a prisoner in the cell. It is a very important position and there are specific rules and regulations governing their responsibilities, and they are never to leave their post unattended.

He identified the Keyport Police Department Manual of Rules and Regulations which govern the Department and the positions. You are required to fill your relief in on

what happened on your shift and never leave before your relief arrives. If someone does not come to relieve you, you need to call your supervisor and find out who is replacing you. The chief decides who will work the shift if your relief did not come in.

On July 26, 2017, he heard about what happened with Dispatcher Fox leaving before her relief arrived. He was put in charge of the investigation because there had been some issues between Chief Casaletto and Fox. He asked Ms. Fox for her statement and at first, she did not give it to him and said she was talking to an attorney. She eventually sent him an email about a week later. In her email she acknowledges that she left her post before her replacement arrived. She claimed that she told the Sargent she was leaving to go home. However, she acknowledged there was no discussion about who her relief was or that they had not arrived. She characterized the incident of leaving her post as a "one-time oversight."

Chief Hafner testified that he obtained statements from everyone involved. It was standard procedure to request written statements from everyone involved. He requested statements from DeGroat, Salvatore, Dixon and several others. Casaletto provided a statement as well since he was there when it happened. He concluded that Fox had left before her relief arrived. When she said good-bye to everyone, they all assumed that she was properly relieved before she left. After she was gone, someone looked in the desk area, and saw that there was no one there and that she left prior to being relieved. The Chief pointed out the sections of the SOP's which require monitoring of the prisoners if you are the dispatcher on duty, and the rule which requires individuals to stay in their post until properly relieved. He concluded that Fox violated both of these provisions.

Christopher DeGroat is a patrolman with the Keyport Police Department and has been employed there for approximately four years. As a junior officer, he is assigned to the dispatch desk several times a month. This occurs when someone is out and due to budget cuts they don't always call in the part-timers. On the day in question, he saw Carol Fox leaving when he was in the parking lot. He did not know yet that I was going to have to handle the desk. Dixon advised him when he came in that he had to cover the dispatch

desk. It is up to the Sargent to decide who will cover when someone is out. Sometimes he would get a text message about it before he arrived, and other times he would just find out after he arrived. When you are working dispatch, you cannot leave the desk unless you have someone to cover for you. You must watch any prisoners in the jail and answer the phones. You may not leave until your relief arrives and you need to tell your relief about anything that happened during your shift before your leave.

Robert Hassmiller has been a patrolman in Keyport for four years. He has had to cover the dispatch desk dozens of times. As a junior officer, you often have to fill in on the dispatch desk. You don't know until you are coming in if you are going to have to work dispatch. There are rules and regulations governing the job of dispatch. You must answer the phone and watch the security camera on the prisoners. You also have to respond to anyone coming in the door. The desk must be manned around the clock and you cannot leave until you get someone to relieve you. The supervisor will usually find someone to cover the desk for you or you can call someone to cover for you if you need a break. When your shift is over, you cannot leave until your relief arrives, and you need to fill your relief in on what happened in the past twelve hours. He has never arrived at the dispatch desk and not had someone there. Likewise, he has never left the desk prior to his relief arriving. He testified that when he saw Carol Fox leaving that day, he assumed that her relief had arrived. However, he did not know who was scheduled to cover the dispatch desk. When someone calls out or there is a vacation, it is up to the Sargent on duty to figure out who is going to cover the desk.

Robert McCartin is detective for the Borough of Keyport. He was a patrolman for twenty years prior to that and occasionally worked dispatch. He was familiar with the rules and testified that you must remain in your post until you are relieved. He never left his post at dispatch before he was physically relieved by someone. You must request relief if you want to leave the post for any period of time. If someone is not there at the end of your shift, you call your supervisor and ask him to relieve you or find someone to relieve you. He was working the day that Fox left her post before her relief arrived. Chief Hafner asked him to give a statement about the event of the morning of July 26, 2017.

He was with Salvatore and Casaletto in the office, when he observed Fox leave the building. He later noticed that that no one was in dispatch and asked Dixon who the dispatcher was because Fox left and no one was there. That is when they realized that Fox had left before her relief had arrived.

Steven Gallow is the township administrator for the Borough of Keyport. He is responsible for personnel matters such as discipline. He was familiar with this matter and was advised that Fox had left her post before relief arrived on the morning of July 26, 2017. He asked Mark Hafner do the investigation because there were issues between Chief Casaletto and Fox. During an investigation it is normal to request that all the employees give a written statement when an investigation is conducted. He is familiar with the policies which govern disciplinary actions. He is also familiar with the rules regarding remaining at your post until relief arrives and the need to monitor a prisoner in the cell at all times from the camera at dispatch.

After the investigation was completed, he determined that Carol Fox had left her post prior to her relief arriving. He determined that the offense was egregious enough to merit removal. It was a violation which jeopardized the public safety of the prisoner as well as the public. It was also a clear violation of the rules and regulations governing the department and the post of dispatch. He noted that she had several prior disciplinary actions for incompetency and neglect of duty, and had no excuse for just leaving her post. Accordingly, he felt that removal was the appropriate level of discipline.

For appellant

Matthew Salvatore was an officer at the Keyport Police Department until September 2017, when he retired. He testified that Ms. Fox was a good worker and she was helpful when you asked her to do anything. He never had any issues with her. He was on duty on July 26, 2017. He recalled that Gallagher was not coming in but he did not recall who the replacement was. When he saw Fox leaving he said goodbye and did not think anything of it. In his opinion, it was just a misunderstanding. He does not think

that she would just abandoned her post. However, he did not dismiss her and would not have dismissed her until her replacement arrived. He did not ask her to stay because he didn't think he needed to because you can leave your post until replacement arrives. He testified that the rules are clear that you are not allowed to leave your post until your replacement arrives.

Carol Fox has been a dispatcher for Keyport Borough Police Department for thirteen years. She is familiar with the rules and regulations governing the department with respect to the job duties. Her duties include answering emergency calls for police and fire and watching any prisoners in the cell. You are required to fill in the log sheet with anything that happens. She was working from 6:30 p.m. to 6:30 a.m. on July 26, 2017. Her shift ended at 6:30 a.m. and Dixon, Salvatore, McCartin, and Hassmiller were in the office. She stopped and said goodbye to them and left. She never asked who was relieving her, and did not seek permission to leave her post before her replacement arrived. She knew that the usual relief, Gallagher was on vacation, but she did not know who was supposed to relievher her and she did not ask. She testified that she just assumed they knew someone needed to relieve the dispatch.

The next day, Salvatore came to her and told her there was a problem because she left her post before her relief arrived. Salvatore said an email came from the Chief. She had problems with Chief Casaletto and filed several complaints against him. She testified that she believes that this discipline is retaliatory because of her complaints against the Chief. She testified that they should have known no one was at dispatch because she had said goodbye and Gallagher was off. She also said it was a onetime oversight.

FINDINGS OF FACT

The resolution of the charges against appellant requires that I make a credibility determination regarding the critical facts. The choice of accepting or rejecting the witnesses' testimony or credibility rests with the finder of fact. Freud v. Davis, 64 N.J.

Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experiences and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witnesses' story considering its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718,749 (1963). A fact finder is free to weigh the evidence and to reject the testimony of a witness, even though not directly contradicted, when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone, or in connection with other circumstances in evidence, excite suspicion as to its truth. In re Perrone, 5 N.J. 514. 521-22 (1950). See D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to carefully observe the demeanor of the witnesses, it is my view that all of the witnesses were honest and sincere in their testimony. The facts surrounding the charges are undisputed. The appellant does not dispute that she left her post at dispatch prior to being relieved on July 26, 2017. She has been in this position for thirteen years and is familiar with the rules and regulations governing job duties and the requirement for relief prior to leaving your post. Even assuming there was some confusion about who the relief was to be that day, it did not relieve appellant of the responsibility of waiting for relief or contacting a supervisor if relief did not arrive. The fact that she stopped and said good bye to everyone, including her supervisor does not relievher her of the obligation of waiting for relief before leaving her post.

Accordingly, I **FIND** the following as **FACT**

1. On July 26, 2018, the appellant was working the 6:30 p.m. to 6:30 a.m. dispatch shift at the Keyport Borough Police Department.

2. At the end of her shift, the appellant left at approximately 6:35 a.m. before her relief arrived.
3. The appellant left the dispatch desk and a prisoner unattended.
4. The appellant never requested any relief or provided any reason why she had to leave before her relief arrived.
5. The rules and regulations prohibits leaving the desk unattended
6. The rules and regulations require you to wait for your relief before you leave at the end of your shift.
7. The rules and regulations require log notes every fifteen minutes of your observation of any prisoners.
8. On the morning in questions, there was a prisoner in the cell.
9. The appellant had not been relieved by anyone.

LEGAL ANALYSIS AND CONCLUSION

The Civil Service employee's rights and duties are governed by the Civil Service Act, N.J.S.A. 11A:1-1 to 12.6. The Act is an important inducement to attract qualified personnel to public service and is to be liberally construed toward attainment of merit appointment and broad tenure protection. See Essex Council Number 1, N.J. Civil Serv. Ass'n v. Gibson, 114 N.J. Super. 576 (Law Div. 1971), rev'd on other grounds, 118 N.J. Super. 583 (App. Div. 1971); Mastrobattista v. Essex County Park Commission, 46 N.J. 138, 147 (1965). The Act also recognizes that the public policy of this State is to provide public officials with appropriate appointment, supervisory and other personnel authority in order that they may execute properly their constitutional and statutory responsibilities. N.J.S.A. 11A:1-2(b). A public employee who is thus protected by the provision of the Civil Service Act may nonetheless be subject to major discipline for a wide variety of offenses

connected to his or her employment. The general causes for such discipline are enumerated in N.J.A.C. 4a:2-2.3.

This matter involves a major disciplinary action brought by the respondent appointing authority against appellant seeking her removal. Specifically, appellant was charged with violation of N.J.S.A. 4A:2-2.3 (a) General Causes: 1. Incompetence, inefficiency or failure to perform duties; Neglect of Duty and Other Sufficient cause. Appellant is also charged with violating Keyport Borough Police Department Rules and Regulations as well as the Borough of Keyport Code section pertaining to the duties of the Communications Operator. It is undisputed that appellant left her post on July 26, 2017, prior to being relieved, leaving a prisoner and the emergency phone desk unattended.

Based upon the testimony and findings, I **CONCLUDE** that the respondent has satisfied its burden of proving that appellant left her post at dispatch without being relieved in violation of rules and regulations and engaged in incompetency, inefficiency, neglect of duty and other sufficient cause.

The issue then becomes, not whether the charges have been sustained, but rather, the level of discipline to be imposed. Keyport urges removal and the appellant urges that some level of discipline less than removal is appropriate.

PENALTY

Once a determination is made that an employee has violated a statute, regulation or rule concerning his employment, the concept of progressive discipline must be considered. When dealing with the question of penalty in a de novo review of a disciplinary action against a civil service employee, the Merit System Board (i.e. now the Civil Service Commission) is required to evaluate the proofs and penalty on appeal, based on the charges. N.J.S.A. 11A:2-19; West New York v. Bock, 38 N.J. 500 (1962). With respect to the discipline, under the precedent established by Town of West New York v.

Bock, supra, courts have stated, “[a]lthough we recognize that a tribunal may not consider an employee’s past record to prove a present charge, West New York v. Bock, Id. at 523, that past record may be considered when determining the appropriate penalty for the current offense.” In re Phillips, 117 N.J. 567, 581 (1990). Ultimately, however, “it is the appraisal of the seriousness of the offense which lies at the heart of the matter.” Bowden v. Bayside State Prison, 268 N.J. Super. 301, 305 (App. Div. 1993), certif. denied, 135 N.J. 469 (1994).

“[W]here the underlying conduct is of an egregious nature,” an individual may be removed regardless of disciplinary history. In re Glenn, CSV 5051-03, Initial Decision (February 25, 2005), adopted as modified, Merit Sys. Bd. (May 23, 2005), <<http://njlaw.rutgers.edu/collections/oal/>>; see Henry, supra, 81 N.J. 571. Counseling, warnings, meetings, etc., do not constitute discipline under Civil Service rules. See N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-3.1. The appellant has seven prior charges of incompetency, inefficiency and neglect of duty. Although none of them resulted in a significant suspension, the respondent urges removal due to egregious nature of the current charges. The appellant seeks something less than removal.

I **CONCLUDE** that the penalty of removal is appropriate given the egregious nature of the offense of just leaving an important post without securing relief, which could have resulted in life threatening consequence for the public trying to call in an emergency and the prisoner who was left without supervision. I further **CONCLUDE** that there are some aggravating factors as well. One factor is that appellant continued to try to justify leaving her post by claiming she said good bye first and that it was a “one time” oversight.” The prior offenses of neglect of duty and/or incompetency are further aggravator factors.

ORDER

The charges of incompetency, inefficiency, insubordination, neglect of duty and violations of the Keyport rules and regulations has been sustained. I therefore, **ORDER**

the action taken by the Keyport in removing appellant from her position as a Communications Operator is **AFFIRMED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

February 27, 2018
DATE


SARAH G. CROWLEY, ALJ

Date Received at Agency:

February 27, 2018 (e-mailed)

Date Mailed to Parties:

February 27, 2018 (e-mailed)

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APPENDIX

WITNESSES

For Appellant:

Matthew Salvatore
Carol Fox

For Respondent:

Robert McCartin
Robert Hassmiller
Christopher DeGroat
Mark Hafner
Steven Gallow

EXHIBITS

Joint:

- J-1 Keyport Police Department Manual of Rules and Regulations Adopted
February 17, 2015
- J-2 July 28, 2017 Carol Fox Statement
- J-3 August 7, 2017 Carol Fox Statement
- J-4 July 28, 2017 Sargent Salvatore Statement
- J-5 DeGroat Statement
- J-6 McCartin Statement
- J-7 August 9, 2017 Dixon Statement
- J-8 August 11, 2017 Hassmiller Statement
- J-9 August 17, 2017 Casaletto Statement

- J-10 Section 3-5-8 of Municipal Code of Keyport
- J-11 Borough of Keyport Employee Handbook August 3, 2016
- J-12 August 29, 2017 Preliminary Notice of Disciplinary Action; September 5, 2017 Preliminary Notice of Disciplinary Action (Revised)
- J-13 September 20, 2017 Final Notice of Disciplinary Action

For Appellant:

None

For Respondent:

- R-1 Keyport Police Department SOP – Reference 2004-01
- R-2 Other Fox Disciplinary Actions (Documents – 10 pages)
 - a. January 1, 2008
 - b. May 28, 2008
 - c. April 16, 2013 (5 pages)
 - d. January 9, 2014
 - e. January 10, 2014
 - f. September 22, 2014